

REMARKS

Applicant respectfully thanks the Examiner for acknowledging the claim for foreign priority in this Application as well as for considering the Information Disclosure Statements (IDSs) filed on April 4, 2006 and May 2, 2007.

In response to the Office Action dated March 4, 2010, Applicant requests reconsideration based on the amendments herein and at least the following remarks. Applicant respectfully submits that the claims as presented herein are in condition for allowance.

Claims 1-20 are pending in the present application (claims 1-3, 5, 7-8, 11-13 and 20 being independent). Claims 1-20 have been canceled in this amendment. New claims 21-31 have been added, leaving claims 21-31 pending for reconsideration.

No new matter has been added by the new claims. Specifically, support for the amendments can be found at least in the previously-filed claims, specification and drawings, as will be described in greater detail below.

Applicant respectfully requests reconsideration of claims 21-31 based upon the amendments and at least the following remarks.

References

Applicant respectfully notes that the Palmatier reference (U.S. Patent No. 5,163,516; cited on page 10 of the Office Action) was not listed in the PTO-892 form attached to the instant Office Action, and has therefore not been formally considered; nor has this reference been previously submitted in an IDS. Applicant therefore respectfully requests that the Examiner indicate formal consideration of the Palmatier reference.

Claim Amendments

Applicant respectfully notes that claims 1-20 have been herein canceled, and new claims from corresponding European Application EP20040790235, which was granted on January 23, 2008, with the associated corresponding claims therein allowed, have been added as new claims 21-31. Applicant further notes that the Saino reference, discussed in greater detail below, was cited in the May 19, 2005 International Search Report for counterpart European Application EP20040790235, subsequent to which the counterpart application, having substantially the same claims as in the as-amended instant application, was allowed.

As claims 1-20 are herein canceled, Applicant notes that all of the objections and rejections in the instant Office Action are thereby rendered moot. As a result, Applicant respectfully requests withdrawal of the outstanding objections and rejections to the claims. In addition, as will be discussed below, new claims 21-32 overcome/render moot all of Examiner's stated reasons for the previous objections and rejections (including those regarding the drawings) in the instant Office Action, and Applicant therefore respectfully submits that the claims as presented herein are in condition for allowance.

No new matter has been added by the new claims; specifically, support for the claims can be found as follows: for new claim 21, at previous claims 3 and 4; for new claim 22, at previous claim 8, as well as at paragraph [0015] of the as-filed application; for new claim 23, at previous claim 9; for new claim 24, at previous claim 10; and for new claims 25 through 31, at previous claims 13 through 19, respectively.

Drawings

The drawings are objected to under 37 CFR 1.83(a), in that the drawings allegedly do not show every feature of the invention specified in the claims. Applicant respectfully notes that the drawings illustrate every feature of new claims 21-31 that is essential for a proper understanding of the invention. In addition, some of the features noted by the Examiner on page 2 of the Office Action, such as the fire alarm, for example, are no longer recited in the claims as currently pending (Applicant notes that any such subject matter has not been surrendered for purposes of allowance).

The drawings are further objected to because "each instance of reference character 17 in Figure 2 should be changed to 17' in light of the specification," as noted on page 3 of the Office Action. Applicant respectfully notes that FIG. 2 has been amended such that each instance of reference character 17 therein has been changed to 17'. No new matter has been added.

For at least all of the reasons stated above, Applicant respectfully requests that the objection to the drawings be withdrawn.

Claim Objections

Claims 7, 8, 11, 12, 15-17, and 20 are objected to due to a number of alleged informalities, as noted on pages 4-5 of the Office Action.

Applicant respectfully notes that claims 7, 8, 11, 12, 15-17, and 20 have been canceled, thereby rendering the objection thereto moot and, accordingly, respectfully requests withdrawal of the objections.

Moreover, Applicant notes that the specific reasons for the alleged informalities listed on pages 4-5 have been, where applicable, cured in newly added claims 21-31. Specifically, for example, proper antecedent basis has been observed, particularly with respect to the “intumescent material” and claim limitations reciting “at least one.” Likewise, “in such way” has been changed to “in such a way,” as suggested by the Examiner.

Claim Rejections under 35 U.S.C. 112, first paragraph

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, for allegedly failing to comply with the enablement requirement, in that these claims allegedly contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant respectfully notes that claims 1-20 have been canceled, thereby rendering the rejection thereof moot and, accordingly, respectfully requests withdrawal of the rejections. In addition, Applicant notes that the specific reasons for the rejections, outlined on pages 5-8 of the Office Action, have been, where applicable, cured in newly added claims 21-31. Specifically, for example, Applicant notes that the structure or device that is intended to be claim has been clearly recited in newly added claims 21-31, in that all of the as-pending claims now recite a material (claim 21 for example) or a device (claims 22 and 25, for example). Moreover, these materials and/or devices are clearly shown in FIGS. 1 and 2 (see, e.g., the material 17 and 17', as well as the general disclosure of FIGS. 1 and 2 which clearly show door openers) and described in the accompanying portions of the detailed specification. In addition, the term “current position” has been deleted from the claims as presented in this amendment.

Claim Rejections under 35 U.S.C. 112, second paragraph and/or 35 U.S.C. 101

Claims 1-6 and 15-19 are rejected under 35 U.S.C. 112, second paragraph, for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-6 are also rejected under 35 U.S.C. 101 because the

claimed recitations of a use, without setting forth any steps involved in the process, allegedly results in an improper definition of a process.

Applicant respectfully notes that claims 1-6 and 15-19 have been canceled, thereby rendering the rejection thereof moot and, accordingly, respectfully requests withdrawal of the abovementioned rejections.

In addition, Applicant notes that the specific reasons for the rejections, outlined on pages 8-10 of the Office Action, have been, where applicable, cured in newly added claims 21-31. Specifically, for example, the claims as presented herein no longer “merely recite a use,” as was allegedly the case in the prior claims. In addition, regarding the terms “rotation point” and “free end” of an adjustable element, Applicant respectfully suggests that these limitations are clear from the drawings, for example. More particularly, referring to the changeover switch 12 shown in FIGS. 1 and 2, for example, Applicant suggests that it is clear that one end – the “upper” end, as viewed in the drawings – is “free,” while the other (lower) end is attached and serves as a pivot point.

Claim Rejections under 35 U.S.C. 102

Claims 1, 2, 5, and 6 are rejected under 35 U.S.C. 102(b) as being allegedly anticipated by Palmatier (US-5163516, hereinafter “Palmatier”), while claims 3, 4, 7-12, and 14-20 are rejected under 35 U.S.C. 102(b) as being allegedly anticipated by Saino (US-5380053, hereinafter “Saino”).

Applicant respectfully notes that claims 1-12 and 14-20 have been canceled, thereby rendering the rejection thereof moot. As a result, Applicant respectfully request withdrawal of the abovementioned rejections.

In addition, Applicant respectfully suggests that new claims 21-31, as presented herein, define over the cited references. Specifically, Applicant notes that new independent claims 21 and 22 recite, inter alia, the limitation “intumescent”, which, according to Merriam-Webster’s Online Dictionary, 11th Edition (available online at <http://www.merriam-webster.com/dictionary/intumescent>) swells or expands when exposed to flame, for example. In contrast, Palmatier merely teaches, primarily at FIG. 1, a device 14 that includes membrane envelopes (19) or fusible pin links (34, 35, 36) that melt to release chemicals. Thus, the allegedly analogous material of Palmatier is clearly not intumescent. Moreover, if the

envelopes/or fusible pin links of Palmatier were intumescent, i.e., expanded with heat, the chemicals would not be released. In addition, Palmatier is completely silent regarding any teaching or suggestion that the material – whether intumescent or not – opens a door or fixes the relative position of any elements, as is required in claims 21 and 22.

Regarding Saino, Applicant notes that Saino was cited in the May 19, 2005 International Search Report for corresponding European Application EP20040790235, which was subsequently granted (January 23, 2008), including substantially the same subject matter as new claims 21-31 as herein presented.

The European allowance of the instant claims notwithstanding, applicant further notes that Saino, similar as with Palmatier, discussed above, fails to teach or suggest the opening of a door or the fixing of the relative position of any elements. Specifically, Saino clearly teaches that the intumescent means 47 (FIG. 2) swells to “urge or force the latch means 27...[to move]” thereby lock the door members 15, 23 in the closed position” (see, e.g., column 4, lines 51-59) (emphasis added).

Thus, it is respectfully submitted that claims 21, 22 and 25, including claims depending therefrom, i.e., claims 23-24 and 26-31, define over Palmatier and/or Saino.

Accordingly, it is respectfully requested that claims 21-31 be passed on to allowance.

Claim Rejections under 35 U.S.C. 103

Claim 13 is rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Thomas (US-4867496, hereinafter “Thomas”) in view of Saino. In addition, the Examiner suggests in the Conclusion on page 13 of the Office Action that “the combination of Thomas in view of Saino as applied to claim 13 above, would support a rejection of claims 3 and 4 under 35 U.S.C. 103,” as well.

Applicant respectfully notes that claim 13 has been canceled, thereby rendering the rejection thereof moot. As a result, Applicant respectfully request withdrawal of the above rejection of claim 13.

In addition, Applicant respectfully suggests that all of new claims 21-31, and claim 25 in particular (finding support in originally-filed claim 13), define over the cited references. Specifically, Applicant notes that independent claim 25 recites, inter alia, a “door

opener...[including] at least one of a locking apparatus and a release apparatus; at least one anchor and latch bolt which are pivotally adjustable relative to each other; and an intumescent material arranged such that that its change in form at least one of changes and fixes the relative position of at least one adjustable element, to one of bring the door opener to a predetermined position and keep the door opener in a predetermined position” (emphasis added).

Thomas, however, fails to teach or suggest the intumescent material, as stated by the Examiner on page 13 of the Office Action. The Examiner further states that this admitted deficiency of Thomas is taught by Saino. Applicant respectfully disagrees. First, as noted above, Saino explicitly teaches a device that closes (“locks”) a door. Second, the (presumed) allegedly analogous anchor and latch of Saino move linearly with respect to each other (e.g., along a horizontal plane defined by the longitudinal axis of the latch 27 shown in FIG. 2 of Saino), whereas the anchor or latch bolt of the present invention are pivotally adjustable relative to each other, as specifically recited in independent claim 25.

Thus, it is respectfully submitted that claim 25, including claim 26 depending therefrom, defines over Thomas in view of Saino. Accordingly, it is respectfully requested that claims 25 and 26 be passed on to allowance.

Conclusion

In view of the foregoing remarks distinguishing the prior art of record, Applicant respectfully submits that this application is in condition for allowance. Early notification to this effect is requested. The Examiner is invited to contact Applicant's attorneys at the below-listed telephone number regarding this Amendment, or otherwise regarding the present application, in order to address any questions or remaining issues concerning the same.

If there are any charges due in connection with this response, including for any necessary extensions of time under 37 C.F.R. 1.136(a) or 1.136(b), for which the Applicant hereby respectfully petitions, please charge them to Deposit Account 50-2036.

Respectfully submitted,

BAKER & HOSTETLER LLP
Applicant's Attorneys

By: /Noah J. Hayward/
Noah J. Hayward
Registration No. 59,515
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Tel. 202-861-1558
Fax. 202-861-1783

Date: June 4, 2010